



## Divorce and Bankruptcy--Some Things to Think About

Written by Sheldon Stein, Esq.; Cleveland, Ohio. Reprinted with permission.

Representing a debtor or debtors in bankruptcy proceedings requires counsel to be keenly aware of how divorce will play a part in the case, especially where counsel is representing an individual debtor.

Similarly, counsel cannot effectively represent a client in a divorce case without having a clear understanding of the interplay between domestic relations law and bankruptcy.

Many attorneys and state court judges erroneously believe that a bankruptcy filing stays the divorce case itself or any related proceedings. In fact, it does not. [FN1] The court is free to grant the divorce and determine custody and visitation issues. Nor does it stop the domestic relations court from deciding or modifying alimony or child support obligations [FN2], or any action to collect upon court ordered income withholding. [FN3]

A bankruptcy does, however, stay action against the debtor's property as far as it is property

of the estate and subject to administration by a bankruptcy trustee, thus effectively stopping the domestic relations court from dividing the marital assets between the parties. [FN4] It does not, however, stop the allocation of assets or the enforcement of support obligations or property division orders as to assets which are not property of the bankruptcy estate. [FN5]

This includes, for example, Individual Retirement Account (IRA) accounts and retirement plans protected by Employee Retirement Income Security Act (ERISA), or as to assets which are exempt under state or federal law. [FN6]

Note, however, that the non-debtor spouse can move the bankruptcy court for an order lifting the automatic stay to allow the divorce to continue. This motion may be opposed by the bankruptcy trustee wishing to liquidate the debtor's assets for the benefit

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## Bankruptcy--Some Resources to Think About

By Glenna Herald

It is a sad fact, the economic nose dive has torched a large section of the legal profession's financial landscape. The current recession does fuel one area of the law, however, bankruptcy. And although one does not wish to profit from another's misfortune, it is important to represent those facing bankruptcy with skill and tact. To support your bankruptcy practice, therefore, the law library offers the following resources.

### Print Resources

Understanding Bankruptcy / Jeffery Thomas Ferriell

Bankruptcy Basics: a step-by-step guide for pro bono attorneys, general practitioners, and legal service offices / John Rao

Bankruptcy / Joe Lee

Bankruptcy Courts and Procedures / Pamela Everett Nolkamper

Bankruptcy Law and Litigation / Daniel A. DeMarco

Chapter 7 Commercial Bankruptcy Strategies Leading Lawyers on Counseling Clients

Chapter 11: Reorganizing American businesses: essentials / Elizabeth Warren

Chapter 13 Bankruptcy: keep your property & repay debts over time / Stephen Elias

Consumer Bankruptcy Law and Practice / Henry J. Sommer

The Foreclosure Survival Guide: keep your house and walk away with money in your pocket / Stephen Elias

Mastering bankruptcy / George W. Kuney

Fundamentals of Bankruptcy Law and Procedure in Ohio / John A. Hollister

Foreclosure and Repossession in Ohio / Glenn E. Algie

Foreclosures: defenses, workouts, and mortgage servicing / John Rao, et al.

### Electronic Resources

Aspen/CCH Bankruptcy Library

BNA's Bankruptcy Law Reporter  
In library only

Tax Management: Discharge of indebtedness, bankruptcy, and insolvency  
In library only

National Consumer Law Center's Bankruptcy Law and Practice

United States Bankruptcy Court  
<http://www.uscourts.gov/bankruptcycourts.html>

Bankruptcy Forms Manual  
[http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html](http://www.uscourts.gov/bkforms/bankruptcy_forms.html)

Cornell University Law School/ Bankruptcy Code  
<http://www4.law.cornell.edu/uscode/html/uscode11/>

If you have questions about these or other library materials, please ask. We are happy to help.



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of creditors. Therefore, counsel for the non-debtor spouse thinking about such a motion should first talk to the Trustee.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) abolished the distinction between alimony, child support, and property settlement obligations by combining all such matters into what is now called “domestic support obligations” (DSO).

A DSO includes any obligation owed to or recoverable by a spouse, former spouse or child of the debtor, or the child's parent legal guardian or responsible relative, or any governmental unit involved in the collection or enforcement of support obligations. It includes obligations established before or after the filing of the bankruptcy petition, including those obligations assigned to private collection agencies for collection purposes. Formerly, support obligations were nondischargeable in Chapter 7 cases and nonsupport obligations and property settlement obligations may have been dischargeable.

Now, all DSO obligations are nondischargeable in Chapter 7 cases, whether in the nature of support or a property settlement. All obligations arising out of a divorce decree cannot be discharged, including “hold harmless” provisions in divorce decrees. [FN7]

On the other hand, property settlement obligations remain dischargeable in Chapter 13 proceedings. [FN8] While filing a Chapter 13 may allow the debtor some relief from an onerous domestic relations order, note that a Chapter 13 Plan cannot be confirmed unless the debtor is current in all post-petition domestic relations obligations are current. [FN9]

Also note that the failure to pay post-petition support constitutes grounds for dismissal of the Chapter 13, even if the debtor is otherwise complying with the terms of the Chapter 13 plan. [FN10]

[FN1]. 11 U.S.C.A. 362(b)(2)(A)(ii).

[FN2]. 11 U.S.C.A. 362(b)(2)(A)(iv).

[FN3]. 11 U.S.C.A. 362(b)(2)(C).

[FN4]. 11 U.S.C.A. 362(a).

[FN5]. See In re Moore, 2009 WL 1616019 at \*5 (Bankr. N.D. Ohio 2009)

[FN6]. See 11 U.S.C.A. 522(c)(1).

[FN7]. See 11 U.S.C.A. 523(a)(5) and (15). In re Cunningham, 2008 WL 6192259 (Bankr. N.D. Ohio 2008). See, also In re Wilhelm, 298 B.R. 464 (Bankr. M.D. Fla. 2003), In re Wilhelm, 298 B.R. 464 (Bankr. M.D. Fla. 2003))(hold harmless obligation held not dischargeable); In re Johnson, 2007 WL 3129951 (Bankr. N.D. Ohio 2007) (hold harmless obligations arising out of separation agreement not dischargeable); In re Schweitzer, 370 B.R. 145 (Bankr. S.D. Ohio 2007) (hold harmless obligation not dischargeable).

[FN8]. 11 U.S.C.A. 1328(a)(2).

[FN9]. 11 U.S.C.A. 1328(a).

[FN10]. 11 U.S.C.A. 1307(c).

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## Apps for Your Mobile Device

Mary Jenkins, Law Librarian & Director

True confessions: I don't have an iPhone or a BlackBerry yet (that won't be the case for long!) However, as an information professional, I can point you to very reliable sources of information. Here, then, is a list of must-read blog posts and articles if you're looking for mobile applications for legal professionals. First, let's acknowledge that Apple iPhone and Google Android are jockeying for position in the race for mobile computing market dominance. A good account of the issues and positions can be found in a recent New York Times article entitled "Apple's Spat With Google Is Getting Personal". Read it online at <http://www.nytimes.com/2010/03/14/technology/14brawl.html?ref=business>.

### Top Ten iPhone Apps for Busy Lawyers

<http://lawyersuccesstips.com/?p=274>

This top 10 list provides a quick list of apps like Skype, Bump, DropBox, and Dragon Dictation and a brief description of each. These are practice-enhancing apps, all aimed at increasing your productivity. Look for their desktop-equivalent applications, even if you don't do mobile computing.

### iPhone Apps for Lawyers

<http://lextekreport.com/2010/03/25/iphone-apps-for-lawyers/>

Chicago Lawyer's LexTek Report picks its favorites from the ABA Tech Show presentation that the author of that Top Ten list offered as "60 iPhone Apps in 60 Minutes." Their top picks include LogMeIn for remote access to your desktop and a couple of law dictionaries.

### Essential Apps for Your Smartphone

<http://www.abanet.org/lpm/magazine/articles/v36/is2/pg40.shtml>

The latest ABA LawPractice issue offers lots of excellent tips from the ABA TECHSHOW, including apps for BlackBerry, iPhone, and Palm Pre. On their lists (broken down by device type): Google applications, Ever-

note, Facebook, and Fastcase. Everyone seems to agree: the Fastcase app is an absolute must.

### Law OnMyPhone: Technology for the Mobile Lawyer

<http://www.lawonmyphone.com/>

A regular read for lawyers on the go, a current post describes the value of its own Court Days, a legal date calculator. It will calculate days between events, factor in court holidays, and generally deal with deadlines and counting days until filing deadlines, for example.

### BlackBerry Apps for Lawyers

<http://21stcenturylaw.wordpress.com/2009/07/21/blackberry-apps-for-lawyers/>

This article is nearly a year old but still relevant. BlackBerry users will be glad to find procedure books (civil, bankruptcy, and more) and state statutes, in addition to productivity applications.

### Where to Look for Apps

To find a diversity of apps, use sites like these to search for topics or functionality of interest to you:

<http://daily-mac-tips.blogspot.com/2010/03/how-to-find-best-iphone-apps-fast.html>

<http://www.evilorange.com/>

<http://na.blackberry.com/eng/services/appworld/>

<http://www.androidappsonly.com/>

### Which Phone Should I Buy?

And are you still wondering which mobile device makes the most sense for you? This is not a recommendation of a particular device, but here is a recent article for your consideration, Droid v. iPhone for Attorneys- The Showdown at <http://www.technoesq.com/law-office-use/2010/03/24/droid-v-iphone-for-attorney-the-showdown/>.

*(Continued on page 5)*

(Legal apps, Continued from page 4)

You will find plenty of opinions. I'd like to hear from our readers about their preferences. All mobile lawyers should stay current by reading material on the ABA LTRC's Mobile Lawyers Resource Center. See <http://www.abanet.org/tech/ltrc/mobicomm.html>.

### Application Development

Finally, have you considered writing your own app for your practice? Larger firms, primarily, are doing that for marketing purposes. If you're giving this any consideration, read this [3 Geeks and a Law Blog](http://www.geeklawblog.com/2010/03/iphone-app-is-nice-if-your-law-firms.html) post first to be reminded that the market is increasingly split between platforms: iPhone, Android, and BlackBerry, which means that application development is a little more complicated than it might seem at first. <http://www.geeklawblog.com/2010/03/iphone-app-is-nice-if-your-law-firms.html>

### Subscriber benefits

Are you familiar with the many benefits included in your subscription to the Hamilton County Law Library? By joining the library you can:

**Access:** to databases, including **LexisNexis**, **Shepards'**, **CCH**, **Hein Online**, and over 70 **Aspen /LOISLaw** treatises in 16 substantive areas

**Connect:** to the wireless network throughout the Law Library, videoconferencing capabilities, and 5 conference rooms, equipped with speaker phones, are available to our subscribers

**Learn:** Free CLE opportunities offered throughout the year

Visit our Law Library Subscriber Services page to find out more. <http://www.hamilton-co.org/cinlawlib/services.html>

## You and the Legal System: Foreclosure

Speaker: Thomas D. Richards, Attorney at Law

Friday, April 16, 2010 at 12:00 noon

Hamilton County Law Library

Free to the public. To register, call 513.946.5300.

Mr. Richards will address the following points related to foreclosure:

Default:

What is it? What caused it? How bad is it?  
How to slow it down and/or put it on hold

Options for the defaulting party:

Reinstatement, Workouts, Payment plans,  
Loan modification, Short sale-deed in lieu,  
Mediation.

Please note that this is not a CLE event. However, attorneys may want to pass along the program announcement to clients, staff, and community organizations. For more information, please call 513.946.5300.

This program is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association Lawyer Referral Service.





# Tech Tip: Library closed? Need a Bar Journal, Law Review or CFR?

By Julie Koehne

Our subscribers with 50 or fewer attorneys in their firm may access HeinOnline remotely via our website. Here is how!

Start with us at <http://www.hamilton-co.org/cinlawlib/resources/Default.asp>

The screenshot shows the Hamilton County Law Library website. The main navigation bar includes links for Home, Find Us, Contact Us, Search, and Home. Below the navigation bar is the library's logo and a tagline: "Professional legal information, resources, and services". The main content area is titled "Legal Research Resources" and contains several sections: "Get Started", "Catalog Search", "Public Resources", "Subscriber Resources", and "Law Blog". The "Subscriber Resources" section is circled in blue and contains a link to "HeinOnline".

Click on the HeinOnline link, then login using your last name and borrower number.

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## Law Library Extranet

Welcome to our Extranet! You will find all of our 24 hour, remote access premium resources here as well as numerous free Ohio, Kentucky, and Federal primary law resources. Have any questions? Give us a call (513-945-5300) or send us your question if it's after hours.

[Case Law, News & Journals](#) | [Topical Databases](#) | [Quick Links](#)

### Case Law

#### Fastcase

Please login again and mark acceptance of terms of service to activate this link.  
Case law from 50 states and Federal jurisdictions, available to all members of the Cincinnati Law Library Association in practice in Hamilton or contiguous counties in Ohio, Indiana, and Kentucky.

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Search all appellate opinions available from the Ohio Supreme Court Web site

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### CLE & Practice

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The Practical Lawyer  
The Practical Litigator  
The Practical Real Estate Lawyer  
Business Law Course materials  
Estate Planning Course materials  
Practical Tax Lawyer

### Clerk of Court Finder

Clerk of Courts by County:

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Need a book? database? Web site? Check out our online catalog to find quick access to online materials as well as one of our thousands of print volumes. You can also search multiple law libraries. If you find something at another law library, we will try to borrow it for you.

### Law Journals & Newspapers

#### Hein Online Law Journals

Also full text Federal Register, Code of Federal Regulations, and Statutes at Large



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- American Association of Law Libraries (AALL)
- Association of American Law Schools (AALS)
- American Law Institute Library
- Bar Journals *\*New\**
- Code of Federal Regulations
- English Reports, Full Reprint (1220-1867)
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- United States Code *\*New\**
- U.S. Attorney General Opinions
- U.S. Federal Legislative History Library
- U.S. Presidential Library
- U.S. Statutes at Large
- U.S. Supreme Court Library

Search for a specific title using the Title Lookup search box.

There are many different libraries to select. Any library may be accessed by simply clicking on the name next to the bullet point.

The Law Journal Library is searchable in multiple ways using the Citation Navigator, Field Search, and Index to Periodical Articles.

Over 70 Bar Journal titles available.

Code of Federal Regulations are available back to 1938.

The Federal Register is available back to volume 1 (1936) and is updated Daily.

United States Codes are available back to 1925 Edition.

U.S. Attorney General Opinions are available back to volume 1 (1791).

U.S. Statutes at Large are available back to volume 1 (1789).

The U.S. Supreme Court Library has U.S. Reports available back to volume 1 (1754).

## Upcoming events

Watch for the following programs, dates and times to be announced.

- Mining social media for attorneys
- Free or low-cost online public record finders
- Legal apps for your mobile devices



Follow the Law Library on Twitter @ hclawlib for the latest library news and events.

## April 2010 Law Library Newsletter

### INSIDE THIS MONTH

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- Tech Tip: HeinOnline
- Apps for your mobile devices

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